

SENATE BILL No. 478

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.8.

Synopsis: Predatory lending. Restricts certain lending acts and practices. Establishes the mortgage fraud unit under the attorney general to enforce this act and investigate violations. Preempts regulation of covered acts and practices by political subdivisions. Increases mortgage recording fees and loan broker registration and renewal fees. Allocates increased revenue to the department of education, secretary of state, attorney general, and county recorders.

Effective: January 1, 2004.

Clark, Lanane

January 21, 2003, read first time and referred to Committee on Insurance and Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 478

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and consumer sales and credit and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2004]:

4 **ARTICLE 4.8. INDIANA FAIR LENDING ACT**

5 **Chapter 1. Consumer Protections**

6 **Sec. 1. (a) The definitions in this section apply throughout this**
7 **article.**

8 **(b) "Affiliate" means any entity that controls, is controlled by,**
9 **or is under common control with another entity, as determined**
10 **under the Federal Bank Holding Company Act (12 U.S.C. 1841 et.**
11 **seq.), as amended. The term does not include an entity whose**
12 **predominant business is providing tax deferred defined**
13 **contribution pension plans to public employees in accordance with**
14 **Sections 403(b) and 457 of the Internal Revenue Code.**

15 **(c) "Bridge loan" means temporary or short term financing**
16 **with a maturity of less than eighteen (18) months that requires**



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1 payments of interest only until the entire unpaid balance is due and
2 payable.

3 (d) "Covered loan" means a consumer credit mortgage loan
4 transaction involving real property located in Indiana that is
5 considered a mortgage under Section 152 of the Home Ownership
6 and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the
7 regulations adopted under that act by the Federal Reserve Board,
8 including 12 CFR 226.32, and the Official Staff Commentary to the
9 regulations as each is amended.

10 (e) "Lender" means any individual or entity that in any twelve
11 (12) month period originates one (1) or more covered loans. The
12 individual or entity to which the covered loan is initially payable,
13 either on the face of the note or contract or by agreement when
14 there is no note or contract, is considered to be the lender.

15 (f) "Mortgage broker" means a person, except for an employee
16 or exclusive agent of a lender, who, for compensation, brings an
17 obligor and a lender together to obtain a covered loan.

18 (g) "Municipality" means a county, city, town, or township.

19 (h) "Ninety (90) day period" means the period beginning on the
20 day notice is provided under section 3 of this chapter and ending
21 ninety (90) days later.

22 (i) "Obligor" means each obligor, co-obligor, cosigner, or
23 guarantor obligated to repay a covered loan.

24 (j) "Political subdivision" means a municipality, school district,
25 public library, local housing authority, fire protection district,
26 public transportation corporation, local building authority, local
27 hospital authority or corporation, local airport authority, special
28 service district, special taxing district, or any other type of local
29 governmental corporate entity.

30 (k) "Servicer" has the same meaning provided in Section
31 2605(i)(2) of the Real Estate Settlement Procedures Act of 1974, 12
32 U.S.C. 2601 et. seq., as amended.

33 **Sec. 2. A covered loan is subject to the following limitations:**

34 (1) A covered loan may not require a scheduled payment that
35 is more than twice as large as the average of earlier scheduled
36 monthly payments unless the a payment becomes due and
37 payable at least one hundred twenty (120) months after the
38 date of the loan. This prohibition does not apply when the
39 payment schedule is adjusted to account for the seasonal or
40 irregular income of the obligor or if the loan is a bridge loan
41 connected with or related to the acquisition or construction of
42 a dwelling intended to become the obligor's principal

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dwelling.

(2) A covered loan may not contain a call provision that permits the lender, in the lender's sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated:

(A) by default;

(B) under a due on sale provision;

(C) where there is fraud or material misrepresentation by an obligor in connection with the loan; or

(D) where there is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in the security for the loan.

(3) A covered loan may not require a payment schedule with regular periodic payments that cause the principal balance to increase. This does not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(4) A covered loan may not require any increase in the interest rate as a result of a default. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the loan agreement, provided the change in the interest rate is not occasioned by the default or a permissible acceleration of the indebtedness.

(5) A covered loan may not include terms under which more than two (2) periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(6) Prepayment fees are subject to the following limitations:

(A) A prepayment fee or penalty is permitted only during the first thirty-six (36) months after the date of execution of a covered loan.

(B) A lender may not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment fee. A lender is considered to have complied with this clause if the obligor receives and executes the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

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1 This notice may be incorporated with any other language.
2 (C) A prepayment fee or penalty may not be charged on a
3 refinancing of a covered loan if the covered loan being
4 refinanced is owned by the refinancing lender at the time
5 of the refinancing.

6 Sec. 3. (a) A lender may not make a covered loan unless the
7 lender or a mortgage broker has given the following notice (or a
8 substantially similar notice) in writing to the obligor within a
9 reasonable time of determining that the loan would result in a
10 covered loan but not later than the time the notice is required
11 under the notice provision contained in 12 CFR 226.31(c), as
12 amended.

13 "CONSUMER CAUTION AND HOME OWNERSHIP
14 COUNSELING NOTICE

15 If you obtain this loan, the lender will have a mortgage
16 on your home. You could lose your home and any
17 money you have put into it if you do not meet your
18 obligations under the loan. Mortgage loan rates and
19 closing costs and fees vary based on many factors,
20 including your particular credit and financial
21 circumstances, your earnings history, the loan-to-value
22 requested, and the type of property that will secure
23 your loan. The loan rate and fees could also vary based
24 on which lender or mortgage broker you select.

25 You should consider consulting a qualified independent
26 credit counselor or other experienced financial adviser
27 regarding the rate, fees, and provisions of this mortgage
28 loan before you proceed. For information on contacting
29 a qualified credit counselor, ask your lender or call the
30 United States Department of Housing and Urban
31 Development's counseling hotline at 1-888-466-3487 or
32 go to www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm
33 for a list of counselors.

34 You are not required to complete any loan agreement
35 merely because you have received these disclosures or
36 have signed a loan application. If you proceed with this
37 mortgage loan, you also should remember that you may
38 face serious financial risks if you use this loan to pay off
39 credit card debts and other debts in connection with this
40 transaction and then subsequently incur significant new
41 credit card charges or other debts. If you continue to
42 accumulate debt after this loan is closed and then

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1 experience financial difficulties, you could lose your
2 home and any equity you have in it if you do not meet
3 your mortgage loan obligations.

4 Property taxes and homeowner's insurance are your
5 responsibility. Not all lenders provide escrow services
6 for these payments. You should ask your lender about
7 these services.

8 Your payments on existing debts contribute to your
9 credit ratings. You should not accept any advice to
10 ignore your regular payments to your existing
11 creditors.".

12 (b) A lender or mortgage broker has met its obligation to
13 provide the disclosure described in subsection (a) if the consumer
14 provides the lender or mortgage broker with a signed
15 acknowledgment of receipt of a copy of the notice set forth in
16 subsection (a).

17 (c) A lender who originates a covered loan may not engage in a
18 pattern or practice of extending credit to an obligor based on the
19 obligor's collateral without regard to the obligor's ability to repay,
20 including the obligor's current or expected income, current
21 obligations, and employment.

22 (d) A lender will be presumed to have violated subsection (c) if
23 the lender engages in the pattern or practice of making covered
24 loans without verifying or documenting the obligor's repayment
25 ability.

26 (e) Any expected income from any source other than the
27 obligor's equity in the property securing the covered loan,
28 including regular salary or wages, gifts, expected retirement
29 payments, or income from self employment may be considered
30 when evaluating the obligor's ability to repay. A lender may verify
31 and document an obligor's income and current obligations through
32 any reliable source that provides the lender with a reasonable basis
33 for believing there are sufficient funds to support the covered loan.
34 Reliable sources include, but are not limited to, credit reports, tax
35 returns, pension statements, and payment records for employment
36 income.

37 (f) In the case of a stated income loan, the reasonable basis for
38 believing there are sufficient funds to support the covered loan
39 may be the income stated by the consumer, as well as other
40 information in the possession of the person originating the loan
41 after the solicitation of all information that the person customarily
42 solicits in connection with loans of that type. A lender may not

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1 knowingly or willfully originate a covered loan as a stated income
2 loan with the intent to evade this subsection.

3 (g) A lender may not refinance the same obligor into another
4 covered loan within one (1) year after having made a covered loan
5 unless the refinancing is in the obligor's interest. An assignee
6 holding or servicing a covered loan may not, for one (1) year after
7 the date of the origination of the covered loan, refinance any
8 covered loan with the same obligor into another covered loan
9 unless the refinancing is in the obligor's interest. A lender may not
10 engage in acts or practices to evade this subsection, including a
11 pattern or practice of arranging for the refinancing of its own
12 loans by affiliated or unaffiliated creditors or modifying a loan
13 agreement, whether or not the existing loan is satisfied and
14 replaced by the new loan, and charging a fee.

15 (h) A lender may not finance, directly or indirectly, into a
16 covered loan or finance to the same obligor within thirty (30) days
17 of making a covered loan, any individual or group credit life, credit
18 accident and health, credit disability, or credit unemployment
19 insurance product on a prepaid single premium basis sold in
20 conjunction with a covered loan. Any individual or group credit
21 life, credit accident and health, credit disability, or credit
22 unemployment insurance premium calculated and paid on a
23 monthly or other periodic basis may not be considered financed by
24 the lender. This prohibition does not include contracts issued by a
25 government agency or private mortgage insurance company to
26 insure the lender against loss caused by an obligor's default.

27 (i) A lender may not replace or consolidate a zero (0) interest
28 rate or other low rate loan made by a governmental or nonprofit
29 lender with a covered loan within the first ten (10) years of the low
30 rate loan unless the current holder of the loan consents in writing
31 to the refinancing. For purposes of this subsection, a "low rate
32 loan" is a loan that carries a current interest rate at least two (2)
33 percentage points below the current yield on treasury securities
34 with a comparable maturity. If the loan's current interest rate is
35 either a discounted introductory rate or a rate that automatically
36 steps up over time, the fully indexed rate or the fully stepped up
37 rate, as appropriate, should be used instead of the current rate to
38 determine whether a loan is a low rate loan.

39 (j) A lender may not pay a contractor under a home
40 improvement contract from the proceeds of a covered loan other
41 than by an instrument payable to the obligor or jointly to the
42 obligor and the contractor or, at the election of the obligor,



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through a third party escrow agent in accordance with terms established in a written agreement signed by the obligor, the lender, and the contractor before the disbursement of funds to the contractor.

(k) A person may not knowingly make, propose, or solicit fraudulent, false, or misleading statements on any mortgage document or any document related to a mortgage, including a mortgage application, real estate appraisal, or real estate settlement or closing document. For purposes of this subsection, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

Sec. 4. A servicer of a covered loan shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection does not prevent a servicer from agreeing with the obligor not to report specified payment history information in the event of a resolved or unresolved dispute with an obligor and does not apply to covered loans held or serviced by a lender for less than ninety (90) days.

Chapter 2. Enforcement and Mortgage Fraud Unit

Sec. 1. (a) The attorney general may enforce this article for any violation occurring within one (1) year of the occurrence of the violations. It is the intent of the general assembly that persons engaged in the purchase, sale, assignment, securitization, or servicing of covered loans may not have any liability under this article for the action or inaction of persons originating the loans. The remedies provided in this article are the sole and exclusive remedies for any violation of this article.

(b) As used in this chapter, "unit" refers to the mortgage fraud unit established by this section.

(c) The mortgage fraud unit is established in the office of the attorney general.

(d) The attorney general shall hire qualified individuals to implement the responsibilities of the unit, subject to the budget agency's approval.

(e) The unit shall do the following:

- (1) Investigate allegations of fraud in connection with mortgage lending.
- (2) Institute appropriate administrative and civil actions to redress fraud in connection with mortgage lending.

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(3) Cooperate with federal, state, and local law enforcement agencies in the investigation of fraud in connection with mortgage lending.

(4) Cooperate with appropriate federal and state agencies in the prosecution of criminal violations involving fraud in connection with mortgage lending.

(f) The unit shall cooperate with the following to implement this chapter:

(1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The supreme court disciplinary commission with respect to attorney misconduct.

Sec. 2. The attorney general may file complaints with any of the agencies listed in section 1(f) of this chapter to implement this chapter.

Sec. 3. The establishment of the unit and its powers does not limit the jurisdiction of any agency described in section 1(f) of this chapter.

Sec. 4. (a) The attorney general and an investigator of the unit may do any of the following when investigating alleged fraud in connection with mortgage lending:

(1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.

(2) Issue and serve a subpoena for the appearance of any person before the attorney general to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

(b) The attorney general may make recommendations to the general assembly for appropriate legislation to address fraud in connection with mortgage lending.

(c) The unit shall maintain an education program to inform consumers of mortgage loans about fraud in connection with mortgage lending. The unit shall cooperate with the agencies listed in section 1(f) of this chapter to develop and implement the

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education program required by this subsection.

Sec. 5. A lender in a covered loan who acts in good faith and fails to comply with this article does not violate this article if the lender establishes that within ninety (90) days of the discovery of an error and before any action under this section is instituted:

- (1) the obligor is notified of the compliance failure; and
- (2) whatever adjustments are necessary are made to the loan either to:

- (A) make the covered loan satisfy the requirements of this article; or

- (B) change the terms of the loan in a manner beneficial to the obligor so that the loan will no longer be considered a covered loan subject to the provisions of this article.

Chapter 3. State Power to Regulate Lending

Sec. 1. (a) The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

(b) Political subdivisions may not enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices, including interest rates and fees, or from imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

- (1) are subject to the jurisdiction of the department;
- (2) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;
- (3) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivision (1), (2), (4), or (5);
- (4) are chartered by the United States Congress to engage in secondary market mortgage transactions; or



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(5) are created by the Indiana housing finance authority.

Chapter 4. Revenue and Appropriations

Sec. 1. The fees assessed by the county recorder to record a mortgage are increased by three dollars (\$3) per mortgage filing. The county recorder shall retain fifty cents (\$0.50) of the fee increase. The revenue from this fee increase is credited to the securities division enforcement account created under IC 23-2-1-15.

Sec. 2. The fee assessed under IC 23-2-5 by the secretary of state for the licensure and registration of loan brokers and originators is increased by fifty dollars (\$50) for renewal of a registration and by fifty dollars (\$50) for an initial registration. The revenue from this fee increase is credited to the attorney general.

Sec. 3. Fifty percent (50%) of the revenue generated by the fee increases in sections 1 and 2 of this chapter is appropriated to the department of education for the purpose of identifying, promoting, and funding financial literacy training and programs throughout the state. Such training and programs shall cover topics that include budgeting, insurance, investing, managing credit, financial planning, retirement savings, consumer loans, and mortgages.

Sec. 4. Fifty percent (50%) of the revenue generated by the fee increases in sections 1 and 2 of this chapter is appropriated to the mortgage fraud unit created within the office of the attorney general by IC 24-4.8-2-1(c).

SECTION 2. [EFFECTIVE JANUARY 1, 2004] The provisions of IC 24-4.8, as added by this act, are severable in the manner provided by IC 1-1-1-8(b).

SECTION 3. [EFFECTIVE JANUARY 1, 2004] IC 24-4.8, as added by this act, applies only to loans originated after December 31, 2003.

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